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Tai Thong Flower Nursery Sdn Bhd v Master Pyrodor Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A-02(NCVC)(W)-1395–06 OF 2013
ZAHARAH IBRAHIM, ANANTHAM KASINATHER AND ABANG ISKANDAR JJCA
2 OCTOBER 2014

Land Law — Vacant possession — Claim for — Claim based on contention plaintiff was registered owner of land — Challenge raised by defendant during cross-examination that transfer of land to plaintiff void for non-compliance with s 214A of the National Land Code — Issue of illegality raised by defendant not pleaded — Whether burden on plaintiff to prove it was lawful owner of land and that s 214A had been complied with

The instant appeal was against an order of the High Court allowing the respondent's claim for vacant possession of a piece of estate land ('the land') occupied by the appellant and allowing the respondent's claim for general damages and exemplary damages against the appellant. The respondent claimed it was the registered owner of the land and that the appellant was unlawfully occupying the same. The appellant denied the allegations and at the trial challenged, through cross-examination of the respondent's sole witness, the respondent's entitlement to vacant possession contending that the transfer and registration of the land in the respondent's name was void for non-compliance with s 214A of the National Land Code ('NLC'), ie that the transfer had not received the prior approval of the Estate Land Board. The respondent objected to the issue of illegality being raised for the first time at trial when it had not been pleaded. In allowing the respondent's claim, the High Court held that the evidence showed the respondent was the registered owner of the land and that no challenge against the respondent's title had been properly mounted by the appellant. This was because the appellant neither pleaded that the respondent's title was defeasible nor did it adduce evidence to establish that contention when it elected to submit 'no case to answer' when the respondent closed its case. The court held the burden was on the appellant to prove the respondent's title was defeasible for illegality and it had failed in that respect. In the instant appeal, the appellant submitted that its challenge was against the respondent's lack of locus to bring an action for trespass and vacant possession. The appellant argued that when it challenged the respondent's right to possession during the cross-examination of the respondent's sole witness at trial, it became incumbent upon the respondent to prove it had that right including proving that its title was not void for contravention of s 214A of the NLC. The court in the instant appeal noted that letters seeming to suggest the approval of the Estate Land Board was obtained for the transfer of the land to

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the respondent were produced as an appendix to the respondent's written submissions tendered at the appeal hearing.

Held, allowing the appeal:

(1) The evidence before the court did not support the respondent's claim to a right to possession of the land. The claim to the right of possession was based on the respondent's claim that it was the registered owner of the land. The burden was on the respondent to prove it was the lawful registered owner of the land. When the illegality of the respondent's registration as proprietor of the land for contravention of s 214A of the NLC was raised, the burden was still on the respondent to prove there was no such illegality and that the necessary approval under s 214A had been obtained (see paras 48–49 & 56).

(2) Under s 214A of the NLC the approval of the Estate Land Board must be obtained before any agreement for the transfer, conveyance or disposal of estate land or any portion of it was executed. The moment such an agreement was executed without the Board's approval, the execution was conclusive proof the transfer, conveyance or disposal was done in contravention of the clear prohibition in s 214A(1). Although s 214A itself did not provide that an agreement to transfer, convey or dispose of estate land without the Estate Land Board's approval was void, the prohibition in s 214A(1) and the offence created by s 214A(10A)(a) meant any contract for such transfer, conveyance or disposal and any memorandum of transfer pursuant to such contract was liable to be struck down as being void for illegality under s 24 of the Contracts Act 1950. The registration of any title under a void instrument would exclude such registration from the indefeasibility protection of s 340 of the NLC (see paras 52–55).

[Bahasa Malaysia summary

Rayuan ini adalah terhadap perintah Mahkamah Tinggi membenarkan tuntutan responden untuk milikan kosong sekeping tanah ladang ('tanah tersebut') yang diduduki oleh perayu dan membenarkan tuntutan responden untuk ganti rugi am dan ganti rugi teladan terhadap perayu. Responden mendakwa ia adalah pemilik berdaftar tanah tersebut dan bahawa perayu telah menduduki tanah tersebut secara tidak sah. Perayu menafikan dakwaan itu dan dalam perbicaraan mencabar, melalui pemeriksaan balas saksi tunggal responden, hak responden terhadap milikan kosong dengan berhujah bahawa pindah milik dan pendaftaran tanah tersebut dalam nama responden adalah tidak sah kerana ketidakpatuhan dengan s 214A Kanun Tanah Negara ('KTN'), iaitu bahawa pindah milik itu tidak diterima sebelum kelulusan Lembaga Tanah Ladang. Responden membantah terhadap isu ketidaksahan yang ditimbulkan buat kali pertama dalam perbicaraan apabila ia tidak diplikan. Dalam membenarkan tuntutan responden, Mahkamah Tinggi

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memutuskan bahawa keterangan menunjukkan responden adalah pemilik berdaftar tanah tersebut dan bahawa tiada cabaran terhadap hak milik responden telah dimulakan oleh perayu. Ini adalah kerana perayu tidak mempli bahawa hak milik responden yang dapat dibatalkan mahupun ia telah mengemukakan keterangan untuk membuktikan hujah itu apabila ia memilih untuk mengemukakan 'no case to answer' semasa responden menutup kesnya. Mahkamah memutuskan beban terletak pada perayu untuk membuktikan hak milik responden yang tidak dapat dibatalkan kerana ketidaksahan dan ia telah gagal berbuat sedemikian. Dalam rayuan ini, perayu berhujah bahawa cabarannya adalah terhadap responden yang tiada locus untuk memulakan tindakan untuk pencerobohan dan milikan kosong. Perayu berhujah bahawa apabila ia mencabar hak responden untuk milikan semasa pemeriksaan balas saksi tunggal responden semasa perbicaraan, ia adalah wajib untuk responden membuktikan ia mempunyai hak termasuk membuktikan bahawa hak miliknya bukan tidak sah kerana melanggar s 214A KTN. Mahkamah dalam kes ini menyatakan bahawa surat-surat itu kelihatan mencadangkan kelulusan Lembaga Tanah Ladang telah diperoleh untuk pindah milik tanah tersebut kepada responden yang dikemukakan sebagai lampiran kepada penghujahan bertulis responden yang ditender semasa perbicaraan rayuan itu.

Diputuskan, membenarkan rayuan:

(1) Keterangan di hadapan mahkamah tidak menyokong tuntutan responden untuk hak milikan tanah tersebut. Tuntutan untuk hakmilikan adalah berdasarkan tuntutan responden bahawa ia adalah pemilik berdaftar tanah tersebut. Beban terletak pada responden untuk membuktikan ia adalah pemilik berdaftar sah tanah tersebut. Apabila ketidaksahan pendaftaran responden sebagai pemilik tanah tersebut melanggar s 214A KTN dibangkitkan, beban masih terletak pada responden untuk membuktikan tiada ketidaksahan sedemikian dan bahawa kelulusan yang perlu di bawah s 214A telah diperoleh (lihat perenggan 48–49 & 56).

(2) Di bawah s 214A KTN kelulusan Lembaga Tanah Ladang hendaklah diperoleh sebelum apa-apa perjanjian untuk pindah milik, pemindahan atau pelupusan tanah ladang atau mana-mana bahagiannya dilaksanakan. Saat di mana perjanjian sedemikian dilaksanakan tanpa kelulusan Lembaga, pelaksanaan itu adalah bukti konklusif pindah milik, pemindahan atau pelupusan yang telah dilakukan bertentangan dengan larangan jelas dalam s 214A(1). Walaupun s 214A dengan sendiri tidak memperuntukkan bahawa perjanjian untuk pindah milik, pemindahan atau pelupusan tanah ladang tanpa kelulusan Lembaga Tanah Ladang adalah tidak sah, larangan dalam s 214A(1) dan kesalahan yang terdapat dalam s 214(10A)(a) bermaksud apa-apa kontrak pindah milik, pemindahan atau pelupusan sedemikian dan apa-apa memorandum pindah milik berikutan kontrak sedemikian patut

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dibatalkan kerana tidak sah kerana ketidaksahan di bawah s 24 Akta Kontrak 1950. Pendaftaran apa-apa hakmilik di bawah alat yang tidak sah boleh mengecualikan pendaftaran sedemikian daripada perlindungan yang tidak boleh disangkal di bawah s 340 KTN (lihat perenggan 52–55).]

Notes

For cases on claim for vacant possession, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 5553–5556.

Cases referred to

Hizran Enterprise & Anor v Kumpulan Sua Betong Sdn Bhd [1994] MLJU 59; [1994] 3 CLJ 622, HC (not folld)

Rengamah a/p Rengasamy v Tai Yoke Lai & Anor [1998] 5 MLJ 260; [1998] 1 CLJ 987, HC (not folld)

Vellasamy a/l Pennusamy & Ors (on their behalf and for the 213 sub-purchasers of plots of land known as PN 35553, Lot 9108, Mukim Hutan Melintang, Hilir Perak) v Gurbachan Singh a/l Bagawan Singh & Ors [2010] 5 MLJ 437; [2012] 2 CLJ 712, CA (not folld)

Legislation referred to

Contracts Act 1950 s 24

National Land Code ss 214A, 214A(1), (4), (10A)(a), (b), (11), 340

Appeal from: Civil Suit No 22NCVC-2 of 2011 (High Court, Ipoh)

Gopal Sri Ram (Chan Kok Keong, Cheang Lek Choy and Ranjan Chandran with him) (Chan & Assoc) for the appellant.

Rajinder Singh Veriah (Rheena Kaur Veriah with him) (Rajinder Singh Veriah & Co) for the respondent.

Zaharah Ibrahim JCA (delivering judgment of the court):

APPEAL

[1] This appeal was filed by the appellant/defendant who was aggrieved by the order of the High Court allowing the respondent/plaintiff's claim for vacant possession of a piece of land in Mukim Ulu Telom, Daerah Cameron Highlands, Negeri Pahang, of which the respondent/plaintiff claimed to be the registered owner; and allowing the respondent/plaintiff's claim for general damages and exemplary damages to be assessed by the registrar.

[2] For ease of reference, the parties to this appeal will be referred to in this judgment as they were in the High Court.

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A THE PLAINTIFF'S CLAIM

[3] The plaintiff filed its writ of summons and statement of claim on 6 January 2011 against the defendant.

B

[4] According to the plaintiff's statement of claim, it was at all material times the sole registered owner of a parcel of land measuring approximately 8.094 hectares or 20 acres ('the subject land') held under HS (D) 3805 PT 2279, Mukim Ulu Telom, District of Cameron Highlands, Pahang,

C

[5] The plaintiff claimed that the defendant had unlawfully occupied the subject land and had built permanent structures and fixtures on the land without the plaintiffs consent.

D **[6]** The plaintiff claimed to have served a notice on the defendant and other occupants of the subject land demanding that they quit and deliver up vacant possession of the subject land but the notice was ignored.

E **[7]** The plaintiff claimed to have then made a formal demand for vacant possession by way of a notice of demand issued by its solicitors. The defendant still did not vacate the subject land.

F **[8]** The plaintiff claimed that the defendant intentionally continued to trespass upon the subject land knowing that the income the defendant would make from its occupation of the subject land would exceed any amount it might be liable to pay to the plaintiff. Hence the plaintiff's claim for exemplary damages.

G THE DEFENDANT'S DEFENCE

[9] The defendant in its defence denied being in unlawful occupation. It claimed that it had been in occupation of part of the subject land since 1 July 1973. It was allowed into occupation by one Ong Eng Chin. The defendant

H claimed that the plaintiff knew all along that the defendant was in occupation of the subject land.

[10] The defendant also denied that the plaintiff was entitled to vacant possession of the subject land.

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THE TRIAL

[11] The case proceeded to full trial which took place on 22 April 2013.

[12] The plaintiff adduced oral evidence through PW1, who was a director of the plaintiff. PW1 was the plaintiff's sole witness.

[13] After the plaintiff closed its case, the defendant submitted that there was no case to answer.

[14] The defendant in its cross-examination of PW1 and in its submissions, raised the issue of illegality in the transfer and registration of the subject land to the plaintiff, the illegality being non-compliance with s 214A of the National Land Code ('NLC').

[15] The defendant's submission on such illegality was strenuously objected to by the plaintiff on the ground that it was not pleaded.

THE HIGH COURT DECISION

[16] The learned judicial commissioner (the 'trial judge') held that the plaintiff was claiming possession by virtue of being the registered owner of the subject land including the portion occupied by the defendant. The legal fact of the plaintiff being the registered owner, according to the learned trial judge, could not be disputed as it was clear from the issue document of title produced in evidence as exh P1.

[17] The learned trial judge also held that the plaintiff's title was indefeasible and there was no challenge to the indefeasibility in the pleadings. The burden of proving the illegality or that the plaintiff's title was indefeasible was on the defendant, and since the defendant chose not to adduce any evidence and did not file a counterclaim to challenge the plaintiff's title, the defendant had failed to challenge the indefeasibility of the plaintiff's title.

THE APPEAL

[18] Before us the defendant submitted that their challenge was not to the plaintiff's title to the subject land per se but to the plaintiff's locus to bring an action for trespass and vacant possession of the subject land.

[19] The defendant contended that the plaintiff did not have the necessary locus to bring an action for trespass or for vacant possession as its right to possession of the subject land had been challenged during the cross-examination of PW1. Once challenged, it was incumbent upon the

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plaintiff, not the defendant, to prove that it had the right to possession of the subject land; and that would mean proving that the title it had was not void for contravention of s 214A of the NLC.

[20] The defendant submitted that the issue of contravention of s 214A of the NLC was only raised during the trial but not pleaded.

ANALYSIS

THE FACTS

[21] We noted that in the statement of claim the plaintiff had pleaded that it was the registered owner of that parcel of land held under HS (D)3805 PT 2279, Mukim Ulu Telom, District of Cameron Highlands. Pahang. The title adduced in evidence was for land registered in the plaintiff's name under GRN 34685 on 27 October 2011. However, the title tendered in evidence showed that this is the final title which replaced HS (D) 3805.

[22] The subject land was part of a parcel of land measuring 203.3542 hectares (approximately 502 acres) held under Geran 5668 (the 'original land').

[23] The original land was purchased by Cameron Fresh Farms Sdn Bhd ('Cameron Fresh') from a company called Permata Wama Sdn Bhd in 2006.

[24] Cameron Fresh applied for, and was granted approval, for the transfer of the original land from Permata Warna Sdn Bhd by the Estate Land Board as evidenced by the letter dated 17 April 2006 from the office of the Director of Land and Mines, Pahang. *This document was only produced before us as an appendix to the written submissions of the respondent*.

[25] The original land was supposed to be acquired by Malaysian Agri-Food Corp ('MAFC'), a company under Khazanah, by way of a sale of the shares in Cameron Fresh to MAFC by Fitters Sdn Bhd which wholly owned the shares of Cameron Fresh.

[26] From the evidence of PW1, particularly during cross-examination, it appeared that the plaintiff, Cameron Fresh and Fitters Sdn Bhd were part of a group of companies called Fitters Holdings Bhd (the 'Fitters Group').

[27] There were problems in the sale of the original land to MAFC due to the presence of 'squatters' on a portion of the original land. To overcome these problems, the Fitters Group devised an arrangement by which a parcel of 20 acres, being the part which the 'squatters' were in occupation, would be excised from the original 502 acres and a subdivision applied for. The excised portion

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would then A-02(NCvC)(W)-1395–06 of 2013 *Tai Thong v Master Pyrodor* be sold to the plaintiff with the purchase price being set off from advances given to the plaintiff by companies in the Fitters Group.

[28] Cameron Fresh and the plaintiff then entered into a sale and purchase agreement dated 26 January 2007 (the 'SPA') for the sale of the 20 acres (the subject land) out of the 502 acres comprised in the original land. At that point of time the subdivision had not taken place. In other words, as at the date of the SPA the subject land did not yet exist as a separate lot under a separate title.

[29] It was clear therefore that while the transfer of the original land to MAFC was to be by way of the sale of shares, the subdivision of the original land and the eventual registration of the subject land in the name of the plaintiff was not such a sale. It was in fact a transfer of part of the original land, that part having been demarcated on the plan attached to the SPA.

[30] There was then an application made to the Estate Land Board for the subdivision of the original land.

[31] Approval was granted by the Estate Land Board for the subdivision of the original land as shown by the letter dated 23 December 2008. *This letter too was only produced before us in an appendix to the respondent's submissions.*

[32] PW1 was unsure about the need to obtain the approval of the estate land board under s 214A of the NLC, and was even more unsure if that approval was in fact obtained, for the transfer of the subject land to the plaintiff after the subdivision.

THE LAW

Section 214A of the NLC

[33] The relevant provisions of s 214A of the NLC are reproduced below.

> 214A(1) Notwithstanding anything contained in this Act, no estate land *is capable of being* transferred, conveyed, or disposed of *in any manner whatsoever* unless approval of such transfer, conveyance or disposal has *first* been obtained from the estate land board ('the Board') established under subsection (3).
>
> (2) The Registrar shall not register any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board.
>
> ...
>
> (4) The proprietor or any co-proprietor of any estate land *desiring to* transfer, convey or dispose of in any manner whatsoever such land shall, together with the person or

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persons to whom the land is *to be* transferred, conveyed or disposed of, jointly submit an application to the secretary of the board in Form 14D.

...

(10A)(a) Any person who transfers, conveys or disposes of or attempts to transfer, convey or dispose of in any manner whatsoever, any estate land in contravention of *subsection (1)* shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than one year and not more than three years and to a fine not exceeding then thousand ringgit.

(b) For the purposes of *this section, the execution of an agreement* to convey or dispose of the whole of an estate to two or more persons, *or to convey or dispose of any portion or portions of an estate land to one or more persons*, without the approval of the Board shall be conclusive proof that the estate land is conveyed or disposed of in contravention of subsection (1); and any act to *demarcate* an estate land or to cause or permit the demarcation of an estate land otherwise than in accordance with the provisions of this Act shall be prima facie proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of subsection (1).

(11) For the purpose of *this Act*, 'estate land' means any agricultural land held under one or more than one title the area or the aggregate area of which is not less than 40 hectares and the *alienated lands* constituting such area are contiguous.

(12) For the purpose of this Act, alienated lands held under final title or qualified title or a combination thereof, shall be taken to be contiguous notwithstanding that they are separated from each other only by such land as is used, requires or reserved for roads, railways or waterways. (Emphasis added.)

[34] The original land was held under one title before the subdivision. After the subdivision but before the registration of the transfer to the plaintiff, the subject land as well as the balance of the original land were still held by Cameron Fresh. The two portions of land, namely the balance of the original land as well as the subject land, were contiguous to each other. Therefore, despite the subdivision, the subject land was still part of an estate land.

Case authorities

[35] The learned trial judge chose to follow the High Court approach in *Hizran Enterprise & Anor v Kumpulan Sua Betong Sdn Bhd* [1994] MLJU 59; [1994] 3 CLJ 622 (the '*Sua Betong*'s case') in which the High Court held that as the land had already been subdivided the estate land board was deemed to have given its approval for the sale of the land in that case.

[36] From our reading of the Supreme Court decision in the *Sua Betong*'s case when it went on appeal, the High Court approach did not find favour with the Supreme Court.

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[37] The Supreme Court's approach in the *Sua Betong*'s case was that the approval of the estate land board was required when estate land was being transferred, conveyed or disposed of in any manner. However, in that case it was held by the Supreme Court that the approval of the estate land board *was* not necessary as the transfer in question was to one person, not to two or more persons.

[38] The Supreme Court in the *Sua Betong*'s case also held that the provisions in para 214A(10A)(b) of the NLC applied only in relation to sub-s 214A(10A), namely to the prosecution of offences under para 214A(10A)(a) because of the word 'sub-s' in para 214A(10A)(b).

[39] Section 214A of the NLC had, since the Supreme Court's decision in the *Sua Betong*'s case, been amended such that the words 'to two or more persons' in sub-s (1) had been deleted. The amendment was made by the National Land Code (Amendment) Act 2001 (Act A1104) which came into force on 1 December 2001.

[40] The effect of the amendment was to make any transfer to any person, even to *one* person, subject to the requirement of the prior approval of the estate land board, the contravention of which would be an offence under sub-s 214A(10A).

[41] Act A1104 also substituted for the word 'sub-s' in para 214A(10A)(b) the word 'section'. With this amendment, the provisions in that paragraph not only would apply in proving an offence under para 214A(10A)(a), but also to any transfer, conveyance or disposal under s 214A.

[42] Act A1104 further replaced the word 'section' in sub-s 214A(11) with the word 'Act'. This would mean that the definition of 'estate land' in that subsection would apply throughout the NLC.

[43] The majority judgment of the Court of Appeal in *Vellasamy a/l Pennusamy & Ors (on their behalf and for the 213 sub-purchasers of plots of land known as PN 35553, Lot 9108, Mukim Hutan Melintang, Hilir Perak) v Gurbachan Singh a/l Bagawan Singh & Ors* [2010] 5 MLJ 437; [2012] 2 CLJ 712 opined that s 214A did not prohibit the making of contractual agreements for the sale of estate land. The majority judgment cited with approval the High Court case of *Rengamah a/p Rengasamy v Tai Yoke Lai & Anor* [1998] 5 MLJ 260; [1998] 1 CLJ 987. The same High Court case was also relied upon by the trial judge in the case before us.

[44] We noted that the majority judgment in *Vellasamy* did not deal with the

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clear words of para 214A(10A)(b). At the time *Rengamah* was decided in 1997, that paragraph was not yet amended.

[45] Further, neither the majority judgment in *Vellasamy* nor the High Court in *Rengamah* dealt with effect of the words 'desiring to' and 'to be' contained in sub-s 214A(4).

DECISION

[46] We were in full agreement with the learned trial judge that he who asserts must prove.

[47] In this case, it was the plaintiff who claimed not only for vacant possession of the subject land but also for general and exemplary damages for having been kept out of the subject land. That claim was founded on the plaintiff's claim that it was lawfully entitled to possession of the subject land by being the registered proprietor of the subject land.

[48] In our considered view, the burden was on the *plaintiff* to prove that it was the lawful registered owner of the subject land.

[49] When the illegality of the plaintiff's registration as proprietor of the subject land for contravention of s 214A of the NLC was raised, the burden, in our view, was still on the plaintiff to prove that there was no such illegality and that the necessary approval under that section had been obtained.

[50] The provisions of s 214A of the NLC as in force on the date of the SPA clearly regulated not merely the transfer, but also the *conveyance* and *disposal* of any estate land. That conveyance or disposal must have the prior approval of the estate land board.

[51] Subsection 214A(1) in no uncertain terms provided that estate land was *not capable* of being transferred, conveyed or disposed of 'in any manner whatsoever' unless the approval of the estate land board had 'first' been obtained.

[52] The presence of the words '*desiring to transfer*, convey or dispose of in any manner whatsoever such land' and the words 'to whom the land is *to be* transferred, conveyed or disposed of (Emphasis added.) In sub-s 214A(4) clearly meant that the obtaining of the approval must be done BEFORE the execution of the agreement by which the land would be conveyed or disposed of.

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[53] The requirement that the approval of the estate land board must be obtained before the execution of any agreement for the transfer, conveyance or disposal of estate land or any portion of it was reinforced by the provisions contained in para 214A(10A)(b). The moment an agreement is executed without the approval of the estate land board for the transfer, conveyance or disposal of estate land, such execution became conclusive proof that the transfer, conveyance of disposal was being done in contravention of the clear prohibition in sub-s 214A(1).

[54] While s 214A of the NLC did not itself provide that an agreement to transfer, convey or dispose of estate land without the approval of the estate land board was void, the fact that such transfer, conveyance or disposal was prohibited by sub-s 214A(1), and the act of transferring, conveying or disposing constituted an offence under sub-s 214A(10A)(a), meant that any contract for such transfer, conveyance or disposal, and consequently any memorandum of transfer pursuant to such contract, was liable to be struck down as being void for illegality under s 24 of the Contracts Act 1950 .

[55] The registration of any title under a void instrument excludes such registration from the indefeasibility protection of s 340 of the NLC.

[56] As the plaintiff's claim to the right of possession of the subject land was based on its claim to be the registered owner of the subject land, we were of the considered view that the evidence before us and the High Court did not support that claim of that right.

[57] We therefore allowed the appeal and set aside the orders of the High Court.

[58] However, the documents in the appendices attached to the plaintiff's submissions showed that there was approval of the estate land board for the subdivision of the original land, and alluded to there being in existence approval of the estate land board for the transfer of the subject land.

[59] In those circumstances, we ordered that the matter be remitted to the High Court for the plaintiff to adduce the evidence of such approvals. The defendant in turn was granted liberty to elect afresh whether to adduce evidence. We ordered costs to follow the event in the High Court.

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A *Appeal allowed.*

Reported by Ashok Kumar

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